

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARLA DAWKINS,)	
)	
Plaintiff,)	
)	
vs.)	No. 4:06CV962-DJS
)	
RALCORP HOLDINGS, INC.,)	
)	
Defendant.)	

ORDER

In the instant action, plaintiff asserts two counts of discrimination in her complaint against her former employer. Under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e et seq., plaintiff alleges in Count I that during her employ she was denied three different promotions/transfers--once in April 2002 and twice in 2004. Now before the Court is defendant's motion to dismiss Count I with respect to its alleged failure to promote in 2002.

Title VII requires the filing of an administrative charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") within 300 days of the act of discrimination in order to recover. 42 U.S.C. § 2000e-5(e)(1). "[D]iscriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges." Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 113 (2002). To allege a continuing violation, plaintiff must show that the acts were not actionable as

discrete violations of the applicable law. Stolzenburg v. Ford Motor Co., 143 F.3d 402, 405 (8th Cir. 1998). Plaintiff's claim concerning defendant's failure to promote or transfer plaintiff in April 2002 is a discrete claim. See Morgan, 526 U.S. at 110-13.

Any discriminatory acts that occurred before January 3, 2004--300 days before the filing of plaintiff's charges of discrimination on October 29, 2004--are time barred by Title VII. Consequently, the Court will dismiss plaintiff's discrimination claim under Count I to the extent that it addresses defendant's alleged failure to promote or transfer plaintiff in April 2002.

Accordingly,

IT IS HEREBY ORDERED that defendant's motion to dismiss [Doc. #6] is granted.

Dated this 5th day of September, 2006.

/s/ Donald J. Stohr
UNITED STATES DISTRICT JUDGES